



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/128,340	08/03/98	LLORIN	P-4278

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EXAMINER

WARE, D

ART UNIT

1651

PAPER NUMBER

DATE MAILED: 10/01/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/128,340

Applicant(s)

Llorin et al.

Examiner

Ware

Group Art Unit

1651



☒ Responsive to communication(s) filed on Aug 3, 1998

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-13 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-13 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Claims 1-13 are presented for examination on the merits.

The drawings have been approved as indicated on the enclosed PTO-948 Form.

The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1651.

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (A) in view of Wood et al. (B).

The claims are drawn to a method for disrupting cells using ultrasonic energy to lyse the cells without beads. The method is applied to mycobacterial cells.

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Miller teaches the technique of ultrasonic energy to be useful without beads (see columns 3-4, all lines).

Wood et al. teach the use of a sonic bath to lyse the cells of mycobacteria (see columns 6-7, all lines).

The claimed subject matter differs from the disclosure of Miller in that it is directed to the use of ultrasonic energy for the disruption of cells.

It would have been obvious to one of ordinary skill in the art at the time of applicants' invention to utilize the ultrasonic technique without beads as disclosed by Miller on the mycobacteria disclosed by Wood et al. Clearly there would have been an expectation of a successful result while using Miller's technique on cells since Wood et al. clearly teach that ultrasonic energy has been used to disrupt cells but without the exclusion of beads. However, Miller teaches it both ways while indicating that it is better to not use the beads; thus there is motivation in the art to apply ultrasonic energy to disrupt cells of mycobacteria without the use of beads. The claims are rendered prima facie obvious over the cited prior art.

All claims fail to be patentably distinguishable over the state of the art discussed above and cited on the enclosed PTO-892 and/or PTO-1449. Therefore, the claims are properly rejected.

No claims are allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is (703) 308-4245. The examiner can normally be reached on Mondays to Fridays from 9:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn, can be reached on (703) 308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7939.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.


Deborah K. Ware

September 30, 1998


DAVID M. NAFF
PRIMARY EXAMINER
ART UNIT 1651